



U.S. Department of Justice

United States Attorney
Southern District of New York

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New York, New York 10007

May 17, 2023

BY ECF

The Honorable Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Securities and Exchange Commission v. Ho Wan Kwok et al.*, 23 Civ. 2200 (PGG)

Dear Judge Gardephe:

Pursuant to Your Honor's Individual Rules of Practice, the Government respectfully submits this letter in opposition to the May 12, 2023 motion filed by Mountains of Spices LLC d/b/a New York Farm ("MOS"). (Dkt. 45). MOS requests that the Court lift the stay in this case so that MAS may file a severance motion.¹ For the reasons previously laid out in the Government's letter motion requesting a stay (Dkt. 42), MOS's request should be denied.

Were a severance granted and were the case as to MOS to proceed, there would be a risk of significant interference with the parallel criminal case, *United States v. Ho Wan Kwok et al.*, S1 23 Cr. 118 (AT) (the "Criminal Case"). While MOS is not a named defendant in the Criminal Case, the SEC's claims against MOS arise out of the same underlying events as the Criminal Case. (See Dkt. 42, at 2-3). Indeed, the Criminal Case and the SEC Civil Action involve nearly identical facts and issues. (See *id.*). With respect to MOS in particular, the Government has alleged in its Indictment that the so-called Farms were instrumentalities used in the billion-dollar fraud charged in the Criminal Case, and MOS is the Farm based in New York. Since Kwok's incarceration, the leader of MOS, who is a subject of the Government's ongoing investigation, has been tapped by Kwok to be the leader of Kwok's "movement," as reflected in phone calls Kwok has made, from the Metropolitan Detention Center, to join online video streams intended for Kwok's followers. In fact, the leader of MOS has been streaming such videos from the mansion in Mahwah, New Jersey, that Kwok purchased with fraud proceeds and the Government is seeking to forfeit. In light of MOS's prominent role in the criminal conspiracy charged in the Criminal Case, allowing the MOS case to be severed and proceed during the pendency of the Criminal Case would raise serious concerns about the use of civil discovery to circumvent the restrictions that pertain to criminal discovery. (See Dkt. 42, at 5 (citing cases finding a stay was warranted on the basis of concerns about civil discovery)). Further, discovery is just one factor among many that all favor a continued stay. (See Dkt. 42, at 3-5).

¹ MOS also appears to ask, in the alternative, for reconsideration of this Court's stay order. Styled either way, MOS's request should be denied.

MOS's arguments to the contrary are unavailing. MOS asserts that it has "little connection to the" Criminal Case, but as described above, that could not be further from the truth. MOS also asserts that it would be prejudiced by a stay due to delay. But that argument could apply generically to any case where a stay is entered in this context, and courts in this Circuit routinely grant such stays nonetheless. (*See, e.g.*, Dkt. 42, at 1). It is also far from apparent MOS will suffer any actual prejudice at all. The claims against MOS will be able to proceed after the Criminal Case, which itself may resolve issues relevant to the claims against MOS. *See, e.g., SEC v. One or More Unknown Purchasers of Secs. of Global Indus.*, 2012 WL 5505738, at *4 (S.D.N.Y. Nov. 9, 2012) ("[T]he Civil Case is likely to benefit to some extent from the Criminal Case no matter its outcome."). Accordingly, MOS's request should be denied.

* * *

For the foregoing reasons, MOS's request should be denied, and the Court should continue stay this proceeding until the resolution of the Criminal Case.

Respectfully submitted,

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Cc: All Counsel of Record (by ECF)